

STATE OF VERMONT
HUMAN SERVICES BOARD

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| In re |) | Fair Hearing No. 15,902 |
| |) | |
| Appeal of |) | |
| |) | |

INTRODUCTION

The petitioner appeals a determination by the Department of Social Welfare that he was not eligible for Food Stamps due to his failure to recertify his eligibility in spite of a pending fair hearing on another issue.

FINDINGS OF FACT

1. The petitioner, who is a disabled man living on Social Security benefits of \$566.91 per month, has been a Food Stamp recipient for a number of years. Last September, he was terminated from Food Stamp benefits because his whereabouts were considered unknown after a benefit card they sent him by certified mail was not picked up. That closure was the subject of a fair hearing (Fair Hearing No. 15,706, December 31, 1998, which is attached hereto), in which the Board dismissed the petitioner's appeal based on an admission by the Department that the petitioner's benefits had been wrongfully terminated and a representation that it would reverse its decision and mail a new electronic benefits transfer (EBT) card to the petitioner forthwith and restore all lost benefits.

2. Through a series of events which can only be described as neglectful and incompetent, the petitioner did

not receive his EBT card until March 22, 1999, more than four months after the Department promised to send it forthwith. The Department has offered no adequate explanation for this delay but has offered the petitioner its apologies. The petitioner, for his part, blames the Board for dismissing his appeal in the face of settlement representations by a Department which he has always viewed as untrustworthy, certainly with some justification in light of recent events.

3. The petitioner does not now appeal this particular delay but rather a notice he received from the Department following his September appeal which he interprets as a continuing decision on the part of the Department that he is not actually eligible for Food Stamps, but only receives them "pending" his various appeals.

4. While the petitioner's prior fair hearing was pending, he received a notice dated November 17, 1998, from the Department telling him that his benefits would be terminated effective December 1, 1998 because he did not provide information needed to verify his eligibility during the semiannual recertification process. The petitioner had declined to be involved in this process because the termination of his benefits was under appeal and he was, as he understood it, eligible for continuing benefits while he appealed, whether he was certified or not.

5. On January 3, 1999, shortly after he received the

Board's December 31, 1998 decision in the first case under appeal, the petitioner filed a written appeal of the November 17, 1998 closure notice on the grounds that it was illegal to terminate a case under appeal and because the Department itself was in "default" for failing to restore his lost benefits as it had promised in settlement of the prior appeal. At that time, the petitioner had not received Food Stamp benefits since September of 1998. The worker who received the appeal did not forward it to the Human Services Board apparently believing that no action had been taken which could be appealed.

6. In response to the petitioner's letter, the worker mailed him a notice informing him that the Department had not made a decision on his "December 1, 1998 application". On January 11, 1999, the worker mailed a second notice to the petitioner informing him that he had been recertified for Food Stamps from December 1, 1998, through January 31, 1999, and would receive benefits for that period of time. The notice explained that benefits were reinstated because the Department did not want to close his case while his fair hearing was pending. However, he was advised that he had to return review papers before January 17, 1999 in order to receive benefits after January 31. In effect, the Department in this notice reversed its November 17, 1999 notice of denial. This action was taken, according to the Department, because it had to re-certify the petitioner

under law in order to pay him any benefits. Given the circumstances, the Department decided to waive the petitioner's co-operation with the recertification for this period and, in effect, re-applied for the petitioner and granted him eligibility so he could be paid benefits pending the appeal.

7. On January 12, 1999, the petitioner wrote to reiterate that he wished to appeal the November 17, 1998 closure notice in order to air his grievances against the Department. He asserted that he did not need to complete the "review papers" because his eligibility remained in effect under the initial appeal of the September 11, 1998 notice of closure.

8. That second request for a hearing was not forwarded by the worker to the Human Services Board. On January 21, 1999, the worker wrote to the petitioner that there was no closure to appeal except what might be coming up if the petitioner failed to return the review paperwork, and he asked for a clarification of the grounds for appeal.

9. In response, the petitioner sent the following reply dated January 22, 1999:

You were told in my demand for hearing that "contrary" to the Dept's belief that [petitioner] needs to "complete" review papers, [petitioner] maintains his eligibility and his demand for benefits. Until those benefits are endorsed, [petitioner] retains his initial certification under demand for a fair hearing appeal dated January 3, 1999.

10. On March 13, 1999, the petitioner wrote a letter to the worker demanding that his appeal of January 3, 1999 be processed or "face federal kinetic prosecution." This letter apparently prompted a meeting between the petitioner and the worker's supervisor on March 17, 1999, at which time the petitioner was assured that his appeal would be processed regarding the November 17 closure letter. The supervisor appears also to have explained to the petitioner that the November 17 closure notice had been reversed by the January 11 notice of recertification.

11. In response to his conversation with the supervisor, the petitioner wrote a letter to his worker on March 17, 1999, contesting the Department's ability to reinstate his benefits on January 11, 1999, once they had been closed, and claiming that only the Board could reverse that action pursuant to a fair hearing. He demanded benefits back to October 1, 1998, or a hearing on the matter.

12. At this point, a fire was apparently lit under someone at the Department to get the long ago promised EBT card to the petitioner. He received a letter March 18, 1999 from his worker informing him that the card was coming to the District Office and could be picked up by March 22 or 23 and that it would contain benefits from October 1998 through March of 1999. This was done as promised and the petitioner agrees he did get the card and all of the promised benefits at that point.

13. The petitioner was also informed that his eligibility had been recertified from February 1 through July 31 of 1999, even though he had not returned the required papers. The Department apparently felt that it could take this action without further information from the petitioner. The petitioner responded at the hearing that he was incensed by the Department's taking it upon itself to recertify him without his permission and asked that the recertification be repealed. The Department again stated that the reason for taking this action was that it could not pay the petitioner pending his January 12 appeal unless he were recertified. The Department has agreed to rescind his certification if that is the petitioner's desire.

ORDER

The petitioner's appeal is dismissed because there are no issues left to resolve and it is now moot.

REASONS

Under the Food Stamp fair hearing appeal regulations a household may continue to receive benefits after an appeal has been filed under certain circumstances:

k. Continuation of benefits.

1. If a household requests a fair hearing within the period provided by the notice of adverse

action. . .and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. . . .

2. Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:
 - i. The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency.

F.S.M. 273.15

The petitioner in this case had continuing benefits based on his September appeal of a case closure for "whereabouts unknown". Under the above regulation, his benefits could only continue pending appeal if his certification period had not expired, although he could have reinstated that period and continued to receive the benefits. The petitioner is incorrect in his assertion that he was not required by law to cooperate with recertification in order to continue his benefits pending appeal. However, the Department, apparently unable to explain this to the petitioner and not wanting to deprive a patently eligible and needy recipient from obtaining food¹, decided to

¹ It must be remembered that the Department was not contesting the benefits which the petitioner was seeking under his underlying appeal. By the time the hearing was held, the Department had agreed that the petitioner should not have been cut off from benefits.

recertify him without his cooperation to continue his benefits.

At this point, the petitioner has agreed that he has received his full Food Stamp benefits for each and every month at issue. He seeks a ruling that the Department's original notice telling him that he was terminated for his failure to cooperate with recertification was illegal because he was receiving continuing benefits. He cannot, however, receive such a ruling both because the notice was not incorrect under the above regulation and because the Department itself rescinded the notice and decided not to take any adverse action against the petitioner with regard to his Food Stamp eligibility. Again, the petitioner's appeal is moot, and, unlike the last appeal, the Department has no remaining promises to keep to resolve the issues. It has already performed every action needed to restore the petitioner's benefits.

It goes without saying that there is great cause for concern in the way this case was handled following the Board's prior decision. That case was mooted on the representation of the Department's attorney that it agreed with the petitioner's position and that the Department would restore his benefits immediately. Obviously such a representation implies a serious obligation to do what was promised. Such a failure to act in accordance with agreements certainly undermines the confidence that parties

and hearing officials should be able to place in the Department. It would be wise for the Department to put mechanisms in place which assure that this does not happen again.

There is a second troubling aspect to what occurred here and that is the failure of the worker to forward the petitioner's January 1999 hearing request to the Board. The Food Stamp regulations make it clear that any person may request a hearing by clearly expressing his or her desire to do so and that "the freedom to make a request for a hearing shall not be limited or interfered with in any way." F.S.M. § 273.15(h). Any request for a fair hearing made by a client must be forwarded without delay to the Board. It is the province of the Board, not the worker, to decide if the appeal has any merit or not. It would certainly be desirable for the worker to review these regulations with his supervisor if he is not familiar with them or does not understand them.

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